IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6931 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH T. GOHEL

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6931 of 2004

MR HARIN P RAVAL for Petitioner No. 1

MR AD OZA, LD.PUBLIC PROSECUTOR for Respondent No.1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/10/2004

ORAL JUDGMENT

This is an application moved by the petitioner-orig. accused no.60 of the offence registered

vide C.R. No.I-1/95 with C.I.D. Crime Police Station, Vadodara Zone, for various offence punishable under Sections 120B, 389, 348, 409,434,466, 468,471, 475, 411, 419, 109, 114, 104, 167,182, 193,195,196, 199, 200, 204,205, 209,211,219,220 and 506(1) of the Indian Penal Code and also under Sections 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, invoking jurisdiction of this Court under Section 439(1) r/w. Section 437(1) of the Criminal Procedure Code (for short 'the Code'). The petitioner is arrested on 15th June, 2004 and since then he is in custody. The petitioner has been interrogated by the Police when he was under police remand.

2. The say of the petitioner is that he is a practicing lawyer and a social worker concerned with many social and welfare activities in the area of District Kheda in general and Taluka Thasra in particular; and he has been falsely implicated in such a very serious crime committed by some persons only with a view to obtained non-bailable warrant against the orig. complainant and his close relatives. I have considered the FIR dated 3rd February, 1994, lodged by Manohar Madhoram Gelani of Ullasnagar, Dist.Thane (Maharashtra). The present petitioner is not named in the FIR but the say of the prosecution is that the present petitioner has played an active role as a part of conspiracy hatched by main accused persons.

3. The oral submissions made by Mr.A.D. Oza, ld. Public Prosecutor are also considered. The gist, according to prosecution, is that the present petitioner has acted as a motivation force and also as an instrument in getting bogus warrant and has also visited Ullasnagar, so that large sum of amount that can be recovered from the complainant under larger conspiracy at various places in the State of Gujarat and for that false complaints have been filed and by indulging in corrupt practices, the accused persons got issued bogus warrants against the complainant and his close relatives.

4. Mr.Harin Raval has attempted to demonstrate various aspects from the papers of investigation and has submitted that without entering into the nature of evidence collected by the prosecution uptill now, it would not be legally possible to prove that the present petitioner has ever played any active role in hatching conspiracy or has ever acted under the frame of the conspiracy that must have been hatched between the real accused persons at one point of time. Mr.Raval tendered one document whereby the present petitioner was requested

by his advocate friend recommending the say of the person who had approached with that letter to him and that letter indicates that the author of the letter himself has attempted to obtain warrant by instituting a complaint at Padra but as he has failed in obtaining warrant. Even on the returnable date of summons, he had recommended one advocate at Borsad to see that a non-bailable warrant is got issued on filing of the complaint on behalf of the persons who approaches him i.e. the advocate from Borsad. It is the say of Mr.Raval that looking to the circumstances, it is inferable that the petitioner is being victimized by the Investigating Agency and serious allegations have been levelled against him.

5. The main allegation levelled against the petitioner is that he has tampered with certain documents, especially one vakalatnama that was tendered before the Dakore Court. Mr.Raval has also submitted that the rejection of the bail application of other co-accused has no relevance and the case of the petitioner should be considered independently. Mr.Raval has satisfactorily established one fact that the petitioner was wrongly branded as a person absconding because he has always remained active in the management of the Cooperative Bank and appeared for certain matters and has examined witnesses. The affidavit of one Bhanvarsinh Mansukhlal Purohit, according to Mr.Raval, clearly helps the present petitioner. But the allegation of the prosecution has forced that it was sworn in by his friend namely Rohit J. Joshi. The xerox copy of the affidavit produced at pg.30 (re. pg.35) clearly reveals that the affidavit was sworn by one Mr.A.R. Solanki, Notary, on 20th March, 1995 and it was attested by Mr.Rohit Joshi in the month of February, 2004. One of the contentions of the petitioner is that he being a responsible leading citizen of Thasra, some of the prosecution witnesses have admitted to help the present petitioner voluntarily and the prosecution is wrongly alleging that he is likely to play with the prosecution witnesses, if he is enlarged on bail. Undisputedly, the present petitioner is one of the accused of criminal case popularly known as "Bogus Warrant Case". The Apex Court has also shown its indulgence and on the direction of the Apex Court, the Division Bench of this Court was dealing with one writ petition filed in the public interest, on the day on which present application for bail was moved. I am told that the Division Bench taking up the Public Interest Litigation has concluded the hearing and very shortly, the judgment will also be available to the Court and the public at large. The following submissions, in

short, advanced by Mr.Raval, are found more relevant and, therefore, the Court would like to state these submissions in brief as under :

(i) The case of the prosecution mainly rests upon documentary evidence and there is little scope to disturb these documentary evidence.

(ii) The substantial part of investigation is concluded and now the Investigating Agency has filed chargesheet before the Special Court, Vadodara.

(iii) The rejection of application for anticipatory bail by some other accused persons has no relevant because even as per the say of the prosecution various persons have played different types of roles at various stages in getting issued the bogus warrant.

(iv) This Court has granted regular bail to some of the accused persons and one of them is an advocate namely Khalid Ibrahim Hussain Kadiya, while dealing with Criminal Misc. Application No.4548 of 2004.

(v) The circumstances clearly indicates that larger conspiracy must have been hatched in advance any time prior to the advocate's at either Dakore or Borsad were approached by the main accused persons and some of the accused persons named by the police in the chargesheet are real conspirators and it will be difficult for the prosecution to link present petitioner with the original conspiracy that was hatched for the purpose of realizing amount from the complainant by harassing him by instituting false criminal case in various parts of the State of Gujarat.

(vi) The period for which the petitioner is in prison cannot be ignored and number of Courts while dealing with the application for bail have considered the period undergone by an under trial prisoner.

(vii) In view of the nature of some legal proceedings instituted by some accused persons named in the chargesheet, whereby they have challenged legality and validity of filing of the chargesheet itself, which may prolong the trial and the accused should not be kept in prison for an indefinite or uncertain period and this would result into pre-trial conviction. The reputation of an accused normally should not be used against accused when he is going for bail that he may influence the witnesses. On the contrary, unblemish career of the accused should be considered as a positive point, if bail plea is raised by such a persons accused facing even grave charge.

(viii) The offence committed has given a stigma on the holy institution of the judicial system of the State of Gujarat but on this point only, the accused persons should not be kept behind bars till conclusion of the trial and the accused if is held guilty then appropriate severe imprisonment can be imposed.

(ix) The sensitivity and gravity of the offence is already relevant when the Court is requested to exercise discretionary jurisdiction in such grave offences. The Court is supposed to consider as to whether the apprehension expressed by the prosecution or prosecution witnesses can be ably taken care of by imposing certain stringent conditions and if the answer is in affirmative, then appropriate orders of bail should be passed. The scope of playing with the witnesses is limited in the present case. However, appropriate conditions can be imposed keeping the present petitioner outside certain area. Even the petitioner can be asked not to practise as a lawyer till appropriate further orders that may be passed by the Court in future.

6. Mr. Raval has also taken me through the number of statements recorded by the Investigating Officer and certain contradictions and omissions but it is not the

business of the bail court to evaluate the case of the prosecution in detail while dealing with bail plea.

7. The orig. complainant represented by Mr.S.V. Raju has resisted the bail plea from all the corners and ld.Public Prosecutor, Mr.A.D.Oza, has also submitted that there is active involvement of the present petitioner and he has misused his status and influenced many persons in getting bogus warrants issued. The petitioner committed again one serious wrong when his name emerged on the surface of the crime and tried to play with the documents lying with the Court of Judicial Magistrate First Class, including the Vakalatnama which was produced in the Court. If the petitioner is enlarged on bail, there is every likelihood that he can disturb some important documentary evidence and can influence the witnesses, who are supposed to prove the documents during the course of trial. The observations made by the Court while disposing of the anticipatory bail application filed by one of the accused, are that the act of visiting Ullasnagar by the present petitioner clearly shows his active involvement in hatching the conspiracy and in a serious offence like this, when even one Judicial Magistrate First Class is dismissed from service and one of them is facing suspension, the petitioner should not be enlarged on bail as he is a responsible citizen as an advocate and if he is enlarged on bail, the prosecution apprehends more irresponsible behaviour from him.

8. Mr.S.V. Raju has pointed out various aspects viz. the intention behind hatching the conspiracy; role played by number of persons at different places; the involvement of the present petitioner qua the wrong committed at Dakore for getting issued bogus warrants and in accompanying the other conspirators to Ullasnagar. The law as to conspiracy and principle of constructive law of each conspirator is also brought before the Court by referring certain decisions. Mr.A.D. Oza, ld. Public Prosecutor, has also submitted that for the accused like the petitioner, this Court should not exercise any discretionary jurisdiction and the bail plea should be rejected. Mr.A.D.Oza, ld. Public Prosecutor, has hammered on certain conduct of the present petitioner and especially the evidence collected by the prosecution whereby the petitioner is found involved in playing with the document lying in the Court custody. The conduct of the present petitioner going underground for a long period also should be viewed seriously and it is further submitted by Mr.A.D.Oza that considering the gravity of the offence and quantum of punishment that may be imposed in the case, conviction should be considered and the bail

application should be rejected.

9. Considering number of aspects emerging from the papers of investigation that were tendered before the Court for perusal and some of the copies that are still on record produced by the petitioner, I have also considered the bail orders passed by this Court in favour of some of the accused persons in the very crime. The Court is supposed to take note of one aspect that by way of invoking extraordinary jurisdiction of this Court, some accused persons have challenged the authority to investigate the crime in respect of legality and validity of the chargesheet submitted before the Special Judge, Vadodara, in view of the scheme of Sections 195 and 340 of the Code of Criminal Procedure. The order of the Division Bench in writ petition filed in Public Interest Litigation ultimately may have some bearing on the conduction of the trial and it is very likely, in view of scheme of Sections 195 and 340 of the Code of Criminal Procedure, that the trial against present petitioner may protract for a pretty long time. Undisputedly, some of the accused persons are yet to be arrested and they have moved this Court by filing writ petitions and they have sought protection from formal arrest. It is pointed out that the jurisdiction to conduct trial qua all the 10 cases/incidents that have occurred in the State of Gujarat by Special Judge, Vadodara, is also under serious challenge and so according to Mr.Raval, the petitioner, an advocate and persons engaged in many social activities in the Taluka Thasra, at least should not be kept behind bars. The rejection of the bail application may create situation that can be said to be a pre-trial conviction. It is true that the petitioner can be said to be an influential person and there are serious allegations that he has attempted to disturb the oral as well as documentary evidence but now all the relevant documents so far as present petitioner is concerned are under control of the Investigating Agency. Though Mr.Raval has attempted to point out that several manipulations that have taken place are not at the instance of the petitioner but it would not be appropriate to comment upon this aspect or the aspect whether there is satisfactory prima facie evidence of involvement of the present petitioner in giving threats to the complainant or his close relatives/associates.

10. As observed earlier, as per the settled legal position while dealing with the bail plea, the Court is supposed to consider certain aspects viz. (i) gravity of the crime; (ii) role of the accused in the offence committed; (iii) the accused's impact on the society, if

enlarged on bail; (iv) status of the accused; (v) scope of jumping the bail; (vi) scope of accused of playing with the prosecution witnesses; (vii) whether any accused of the same crime is enlarged on bail and if the answer is in affirmative, the case of the present accused is able to stand on the same footing or not; (viii) whether investigation is pending or concluded qua the accused and last (ix) the period for which the accused has remained in custody, in the background of quantum of punishment, in the event of guilt if proved, that may be imposed.

11. In number of cases, this Court after conclusion of investigation qua the petitioner-accused has exercised discretionary jurisdiction in favour of the accused; especially when there was scope of protraction of the trial. The present petitioner is in judicial custody since 15th June, 2004, so the trial for which the petitioner has remained in judicial custody is also not of only certain days and the petitioner has shown his anxiety to abide by any condition that may be imposed. So without going into further discussion and keeping the apprehensions expressed by Mr.A.D.Oza,ld.Public Prosecutor, the Court would like to exercise discretionary jurisdiction in favour of the present petitioner because it is possible to take care of each apprehension expressed by Mr.A.D.Oza, ld. Public Prosecutor by imposing certain stringent conditions.

12. Considering the facts and circumstances of the case emerging from record and also the papers of investigation that are brought before the Court, the Court would like to exercise discretionary jurisdiction in favour of the petitioner-accused. The petition is therefore hereby allowed and the substantive sentence passed by the trial Court is hereby placed under suspension and the applicant-accused is hereby ordered to be enlarged on bail on his furnishing a solvent surety of Rs.25,000/- (Rupees Twenty Five Thousand only) with one personal bond of the like amount on the following conditions :

(i) The petitioner shall surrender his passport, if any, to the lower Court within a week;

(ii) The petitioner shall not enter and/or stay over in the Kheda District, Vadodara District including the area under the Vadodara Police Commissioner, Anand District, Ahmedabad District and also Jamnagar District without prior permission of this Court. In case of an exigency, the petitioner can enter in the Revenue

District Kheda and Tal.Thasra in particular by intimating the Investigating Agency in writing. The daughter of the present petitioner has delivered a child recently and he may have to go to Thasra town for social reasons. But it is clarified that he shall not stay, on any occasions for more than three to four days without prior permission of this Court.

(iii) The petitioner shall not leave the territory of State of Gujarat without intimation to the C.I.D. Crime Police Station, Vadodara, in writing;

(iv) The petitioner shall give the details of his residence (complete address) to the Investigating Agency and to the trial Court at the time of executing bail and further he shall not change his residence without prior permission of the concerned Investigating Officer;

(v) The petitioner shall surrender his 'Sanad' to Bar Council of Gujarat and shall file an undertaking in this Court on or before 21st November, 2004 that he shall not practise as an advocate/lawyer in any part of the country and shall give a public notice in one vernacular Gujarati newspaper having reasonable circulation in the Districts of Vadodara, Anand and Kheda voluntarily that he has surrendered his 'Sanad' for convenience.

(vi) The petitioner shall not influence the witnesses/prosecution witnesses;

(vii) The petitioner shall execute the bail bond before the Special Judge, Vadodara;

(viii) The petitioner shall not take undue advantage of his liberty or abuse his liberty;

(ix) The petitioner shall not act in a manner injurious to the interest of the prosecution;

(x) maintain law and order;

(xi) pending trial of the present case, if the applicant is found involved or named in FIR in any other case in connection with the offence punishable for imprisonment of the period exceeding THREE YEARS, he shall report to the concerned police station at the earliest and

preferably within 72 hours.

13. It is further clarified that this prohibitory order shall not come in the way of the petitioner, if he enters a particular district for the purpose of attending the Court proceedings but he will be under obligation to leave the District at the earliest on adjournment of proceedings on each date of hearing.

Rule is made absolute accordingly. Direct Service is permitted, today.

(C.K. Buch, J)

Aakar